

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSE M. MEYER and U.S. POSTAL SERVICE,
POST OFFICE, Imperial, Mo.

*Docket No. 97-671; Submitted on the Record;
Issued June 2, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained more than a one percent permanent impairment of the right leg for which she received a schedule award.

On December 19, 1994 appellant, then a 52-year-old letter carrier, sustained a right knee strain in the performance of duty while exiting her postal vehicle. She underwent arthroscopic surgery on February 10, 1995.

By letter dated September 4, 1996, the Office of Workers' Compensation Programs referred appellant, along with the case record and a statement of accepted facts, to Dr. Donald M. McPhaul, a Board-certified physiatrist, for an examination and evaluation as to the extent of her permanent impairment causally related to her December 19, 1994 employment injury.

In a report dated September 20, 1996, Dr. McPhaul provided a history of appellant's condition and detailed findings on examination. He related that appellant underwent diagnostic arthroscopy and chondroplasty of the lateral femoral condyle and lateral patella on February 10, 1995 received physical therapy postoperatively and noted significant improvement. Dr. McPhaul related that appellant returned to work on or about April 13, 1995 and had continued to work since that time. He stated that appellant continued to have some mild and chronic problems with her right knee including chronic pain described as a 5 out of a scale of 0 to 10, exacerbated by walking long distances or walking briskly or lifting more than 40 pounds, intermittent swelling, especially after walking long distances or walking briskly and stiffness. Dr. McPhaul noted that appellant denied numbness or tingling in the right lower extremity and that she favored the right lower extremity but did not notice any specific weakness of the knee.

Upon examining appellant, Dr. McPhaul stated:

“ Examination of the right knee reveals some slight suprapatellar and peri-patellar fullness.... She is not tender to palpation along the joint line and there is no evidence of joint effusion. There is no crepitus with active or passive movement of the knee.

“Range of motion of the right knee reveals that she has 126 [degrees] of flexion and full, 180 [degrees] of extension. She has no medial, lateral, or anterior-posterior instability. There is no evidence of varus or valgus deformity.

* * *

“Reflex testing reveals that the knee and ankle jerks are 2+ and symmetrical. There is no sensory deficit to pinprick over the right lower extremity. The skin of the right lower extremity is warm and dry. Pedal pulses are full. Strength in the extensor hallucis longus, ankle dorsiflexors and evertors, ankle plantarflexors, quadriceps, hamstrings and hip girdle muscles is 5/5. There is no evidence of atrophy of the right lower extremity.”

Dr. McPhaul determined that appellant had a 1 percent permanent impairment of the right leg due to pain according to Table 20 at page 151 and Table 68 at page 89 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) (hereinafter the A.M.A., *Guides*). Dr. McPhaul multiplied the 2 percent maximum impairment for sensory deficit of the femoral nerve provided in Table 68 at page 89 of the A.M.A., *Guides* by the maximum 60 percent impairment for a Grade 3 pain or sensory loss (decreased sensation with or without pain, interfering with activity) in Table 20 on page 151 for a 1 percent permanent impairment due to pain. He found no impairment due to gait derangement, vascular changes, weakness or muscle atrophy, or range of motion. He stated that February 10, 1996 was the date of maximum medical improvement.

In a memorandum dated October 4, 1996, Dr. Daniel D. Zimmerman, the district medical director, opined that Dr. McPhaul’s one percent rating was correct according to the A.M.A., *Guides* and FECA Bulletin 95-17 (Impairment/Schedule Awards -- Alternatives in Calculation).¹ He noted that Dr. McPhaul had discussed range of motion, chronic pain, sensory deficit, discomfort, chronic weakness and internal joint pathology in determining appellant’s impairment.

By decision dated October 22, 1996, the Office granted appellant a schedule award for 2.88 weeks of compensation based upon a 1 percent permanent impairment of the right leg.

The Board finds that appellant sustained no more than a one percent permanent impairment of the right leg for which she received a schedule award.

¹ In FECA Bulletin 95-17, issued March 23, 1995, Table 20 at page 151 and Table 68 at page 89, which Dr. McPhaul used in determining appellant’s permanent impairment, are among the tables listed as mutually exclusive when evaluating almost all impairments of the lower extremities.

The schedule award provisions of the Federal Employees' Compensation Act² provide for compensation to employees sustaining impairment from loss, or loss of use of, specified members of the body.³ The Act, however, does not specify the manner, in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office.⁴ For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.⁵

In this case, in a report dated September 20, 1996, Dr. McPhaul, a Board-certified physiatrist and Office referral physician, provided a history of appellant's condition and detailed findings on examination. He determined that appellant had a one percent permanent impairment of the right leg due to pain according to Table 20 at page 151 and Table 68 at page 89 of the A.M.A., *Guides*. He correctly multiplied the 2 percent maximum impairment for sensory deficit of the femoral nerve provided in Table 68 at page 89 of the A.M.A., *Guides* by the maximum 60 percent impairment for a Grade 3 pain or sensory loss (decreased sensation with or without pain, interfering with activity) in Table 20 on page 151 for a 1 percent permanent impairment due to pain. Dr. McPhaul found no impairment due to gait derangement, vascular changes, weakness or muscle atrophy, or range of motion.

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There is no medical evidence of record showing that appellant has more than a one percent permanent impairment of the right leg.

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8107.

⁴ *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁵ *Luis Chapa, Jr.*, 41 ECAB 159 (1989).

The October 22, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
June 2, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member